

# EXHIBIT 55

09:11

STATE OF MICHIGAN  
THIRD JUDICIAL CIRCUIT COURT OF MICHIGAN  
CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF MICHIGAN      File Nos. 20-004636-01-FH  
20-004637-01-FH

v

JOHN BURKMAN,

and

JACOB WOHL,

Defendants.

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MOTION HEARING (BY ZOOM)  
BEFORE THE HONORABLE MARGARET M. VAN HOUTEN  
Detroit, Michigan - Monday, May 17, 2021

APPEARANCES:

FOR THE PEOPLE:            RICHARD L. CUNNINGHAM (P29735)  
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                                 (313) 456-0204

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COURT REPORTER:           Kim Blackburn, RPR, CSR 7263  
                                 Third Circuit Court  
                                 (313) 224-6813

1 T A B L E O F C O N T E N T S

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3 WITNESSES

PAGE

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None called.

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EXHIBITS

DESCRIPTION

IDENTIFIED

ADMITTED

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10 None identified.

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13 OTHER MATERIAL IN TRANSCRIPT

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People's 404(b) Motion by Mr. Naoum

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Defense Reply to Motion by Mr. Grabel

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People's Response by Mr. Naoum

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Defense Response by Mr. Grabel

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Ruling on the Motion

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Defense Motion for Nonstandard Jury Instruction by Mr. Grabel

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People's Reply by Mr. Cunningham

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Defense Response by Mr. Grabel

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People's Response by Mr. Cunningham

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Ruling on Motion

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Motion for Stay by Mr. Grabel

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Ruling on Motion

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09:48 1 And would you like to respond to the People's argument?

09:48 2 MR. GRABEL: Well, first of all, just briefly, your  
09:48 3 Honor. Obviously, we filed briefs. I would incorporate those  
09:48 4 briefs in there. I'm sure the Court and staff have read the  
09:48 5 briefs.

09:48 6 I'm very familiar with *People v Denson*, your Honor,  
09:48 7 because I am the attorney who argued it at the Supreme Court  
09:49 8 successfully, so I'm familiar with it.

09:49 9 It was not cited for the proposition as the same  
09:49 10 facts. As the Court is aware, every 404(b) case or every case  
09:50 11 has different facts.

09:50 12 Obviously, your Honor, I simply cited *Denson* for the  
09:50 13 tenets that it stands for that the Court should be mindful of,  
09:50 14 when looking at these type of cases, the Court should be  
09:50 15 careful that character evidence is not -- basically that it's  
09:50 16 not masquerading as a proper purpose; it's not masquerading as  
09:51 17 propensity evidence.

09:51 18 In this case, I understand that the AG's position is  
09:51 19 this particular evidence indicates that they tried to alter  
09:51 20 the election. I don't see the nexus between Pete Buttigieg.

09:51 21 This was a democratic primary. And assuming they  
09:51 22 argue that, you're talking about, to be honest with you, the  
09:51 23 first democratic candidate that was a homosexual, I think  
09:51 24 would certainly inflame the jury in this case and obviously  
09:51 25 would make the jury hate Burkman and Wohl, which is propensity

09:51 1 evidence in this case.

09:51 2 There are e-mails in this case that were offered at  
09:51 3 the prelim that basically indicate what the proper motive --  
09:51 4 what the motive was in this case. I don't think it's really,  
09:51 5 frankly, disputable.

09:51 6 There's other defenses to this case that I'm not  
09:51 7 going to go into, but I don't think this is the proper  
09:51 8 purpose. I've outlined the reason and rationale in my brief  
09:51 9 that I don't see this as the same nexus as the robo calls.

09:51 10 I think there's a differentiation in facts between  
09:52 11 the Buttigieg allegation and this. And I think if the Court  
09:52 12 felt there was any probative value in this case, I think  
09:52 13 certainly it would be outweighed by the prejudicial value.

09:52 14 If these e-mails weren't here from Burkman and Wohl  
09:52 15 indicating why they did this -- and it's cited in my brief --  
09:52 16 then I think then perhaps the probative value could be  
09:52 17 certainly increased here, but it's not really a "who done it"  
09:52 18 in this particular situation.

09:52 19 They outline in the e-mails why they did this robo  
09:52 20 call. And again, whether you find that repugnant or  
09:52 21 offensive, I can understand that sometimes politics can be  
09:52 22 unpleasant as in the robo call, obviously, Wohl and Burkman  
09:52 23 identified who they were, that they were a political  
09:52 24 organization.

09:52 25 Believe it or not, political ads sometimes can be

1 STATE OF MICHIGAN       )  
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3 COUNTY OF WAYNE       )

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6                               I certify that this transcript, consisting of 30  
7 pages, is a complete, true, and accurate transcript of the  
8 proceedings and testimony taken via Zoom in this case on May 17,  
9 2021.

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14 June 7, 2021                               /s/ Kim Blackburn

15 Date                               Kim Blackburn, RPR, CSR 7263  
16                               Third Judicial Circuit Court  
17                               1441 St. Antoine Street  
18                               Detroit, Michigan 48226

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